

Appearance Standards

Summary

Development appearance standards, where applicable, address a wide range of design aspects and may apply in various contexts. Federal and North Carolina state courts have upheld certain appearance standards as within the scope of the general police power. The General Statutes authorize zoning ordinances that regulate various aspects of building design, generally, and for particular contexts like historic districts. House Bill 150, as currently drafted, would limit the authority for local governments to enforce appearance standards for single family residences, duplexes, townhomes, and accessory structures.

Types of Appearance Standards

Many aspects of building design contribute to appearance: height and shape, placement and orientation, coverage of the lot, relation to accessory structures and uses, landscaping and screening, slopes and styles of roofs, siding materials and colors, windows and doors, architectural style, ornamentation, and more. Some aspects of design may be context-specific. In a historic district, for example, appearance standards derive from the appearance of the district as a whole. Appearance standards may apply to different contexts, including central business districts, commercial development, existing residential neighborhoods, new residential neighborhoods, important entry corridors.

Appearance standards are tools to address particular aspects of development. Appearance standards may apply to a particular type of use such as screening for junkyards or design elements for manufactured homes. Appearance standards may be used for a prominent entry corridor to promote economic development and protect property values. And, appearance standards may address issues of compatibility and density. Landscaping or screening, for example, may mitigate the impacts of a commercial use next to an existing residential neighborhood. Similarly, various appearance standards address compatibility issues of increased density—like an apartment or small-lot subdivision—near lower density single family homes. Most communities have existing (but non-historic) neighborhoods where compatible redevelopment and re-investment is desired. Some communities use appearance standards in these existing neighborhoods to encourage new development that maintains the character of the neighborhood.

Some local governments around North Carolina have adopted (or are considering) streamlined development review through form-based zoning regulations. Form-based codes emphasize the forms and types of buildings and relation to the public rights-of-way. (In contrast, conventional zoning emphasizes use of a building rather than its form). The form-based requirements incorporate visual depictions to address building height, placement, and relation to the street. Some form-based codes also address aspects of architectural style, features, and materials. Jurisdictions that adopt form-based

zoning commonly match the increased specificity of form with reduced regulation of use-types and streamlined development review.

A 2012 UNC School of Government survey of North Carolina local governments gives some sense of the scope of appearance standards used in North Carolina.¹ Of the responding jurisdictions,² 42 percent reported having some mandatory design standards. Most such standards applied in central business districts, commercial districts, and highway corridor districts. Only 15 percent of responding jurisdictions indicated that they have design standards for single family residential structures. Very few responding jurisdictions reported regulation of architectural detail and style for single-family residential structures outside of historic districts.³

Case Law

As interpreted by state and federal courts, the general police power is broad enough to include regulation of aesthetics. Prior to 1972 North Carolina courts held that regulations could not be based solely on aesthetic concerns, but also must relate to public health, safety, and welfare.⁴ In 1972 the Supreme Court of North Carolina indicated, but did not formally decide, that the police power may be broad enough to regulate property use based on aesthetic reasons alone.⁵ In 1979 the court affirmed that the police power was broad enough to regulate exterior appearance of properties in historic districts.⁶ And, in 1982, the court found the police power broad enough to authorize regulations based on aesthetics alone, overruling prior cases that held otherwise. The court required that such regulation must balance between the public benefit of the regulation and any diminution in value for the property

¹ David W. Owens and Dayne Batten, 2012 Zoning Survey Report: Zoning Adoption, Administration, and Provisions for Design Standards and Alternative Energy Facilities 14-20 (School of Government Planning and Zoning Law Bulletin No. 20, July 2012)(available at <http://sogpubs.unc.edu/electronicversions/pdfs/pzlb20.pdf>).

² Of the 559 cities and counties in North Carolina that have zoning ordinances, 296 jurisdictions responded to the survey, representing 77 percent of the state's residents.

³ Less than 10 percent of respondents indicated less the following appearance standards for single family residential outside of historic districts: type or style of exterior cladding (9%), architectural style (8%), location or style of garage doors (5%), and exterior building color (3%).

⁴ State v. Brown, 250 N.C. 54, 59, 108 S.E.2d 74, 78 (1959) overruled by State v. Jones, 305 N.C. 520, 290 S.E.2d 675 (1982) ("We are in sympathy with every legitimate effort to make our highways attractive and to keep them clean; even so, we know of no authority that vests our courts with the power to uphold a statute or regulation based purely on aesthetic grounds without any real or substantial relation to the public health, safety or morals, or the general welfare.")

⁵ State v. Vestal, 281 N.C. 517, 524, 189 S.E.2d 152, 157 (1972) ("[W]e note the growing body of authority in other jurisdictions to the effect that the police power may be broad enough to include reasonable regulation of property use for aesthetic reasons only.")

⁶ A-S-P Associates v. City of Raleigh, 298 N.C. 207, 216, 258 S.E.2d 444, 450 (1979) ("[W]e find no difficulty in holding that the police power encompasses the right to control the exterior appearance of private property when the object of such control is the preservation of the State's legacy of historically significant structures.")

owner.⁷ Additionally, federal courts considering North Carolina local government regulations have recognized legitimate government interests in aesthetics and protection of property values.⁸

Statutory Authority

In addition to the general police power,⁹ statutory authority for certain types of appearance regulation also is granted under Article 18 (Planning and Regulation of Development) of Chapters 153A and 160A. Generally, zoning regulations are authorized to promote the public health, safety, and general welfare. The statutes call for reasonable consideration of, among other things, “the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such city.”¹⁰

A zoning ordinance may regulate “height, number of stories and size of buildings and other structures, the percentage of lots that may be occupied, the size of yards, courts and other open spaces, the density of population, the location and use of buildings, structures and land.”¹¹ Moreover, the zoning ordinance may divide the jurisdiction into districts and “may regulate and restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures, or land.”¹² A zoning ordinance may provide for conditional use permits¹³ and conditional districts¹⁴ whereby site-specific conditions—such as aspects of building appearance—may be attached to project approval.

The authority and duties of appearance commissions indicates a role for appearance in development regulation. Cities and counties may establish community appearance commissions focused on efforts to

⁷ State v. Jones, 305 N.C. 520, 530, 290 S.E.2d 675, 681 (1982) (“Some of the factors which should be considered and weighed in applying such a balancing test include such private concerns such as whether the regulation results in confiscation of the most substantial part of the value of the property or deprives the property owner of the property's reasonable use, and such public concerns as the purpose of the regulation and the manner in achieving a permitted purpose.”)

⁸ CMH Mfg., Inc. v. Catawba Cnty., 994 F. Supp. 697, 711 (W.D.N.C. 1998) (“Addressing citizen concerns over aesthetics, zoning, and falling property values (actual or perceived) is clearly a legitimate government interest.”); Quality Built Homes, Inc. v. Vill. of Pinehurst, 1:06CV1028, 2008 WL 3503149 (M.D.N.C. Aug. 11, 2008) (“[E]ven if Plaintiffs could identify a protected property interest, there was no due process violation as a matter of law. Courts have held that it is a proper exercise of the police power to adopt zoning regulations for the sole purpose of protecting a community's aesthetics, provided the ordinance is reasonable.”)

⁹ G.S. § 160A-174; § 153A-121.

¹⁰ G.S. § 160A-383; § 153A-341.

¹¹ G.S. § 160A-381(a); § 153A-340(a).

¹² G.S. § 160A-382(a); § 153A-342(a)

¹³ Also called *special use permits*. G.S. § 160A-381(c); § 153A-340(c1) (a zoning ordinance may provide for “special use permits or conditional use permits in the classes of cases or situations and in accordance with the principles, conditions, safeguards, and procedures specified therein and may impose reasonable and appropriate conditions and safeguards upon these permits”).

¹⁴ G.S. § 160A-382(b); § 153A-340(b) (“Conditions and site-specific standards imposed in a conditional district shall be limited to those that address the conformance of the development and use of the site to city ordinances and an officially adopted comprehensive or other plan and those that address the impacts reasonably expected to be generated by the development or use of the site.”)

“enhance and improve the visual quality and aesthetic characteristics of the municipality or county.” Among other things, a local government may authorize an appearance commission to recommend ordinances to enhance the appearance of the jurisdiction.¹⁵

Beyond the general zoning authorization, the General Statutes grant specific authority for certain appearance standards for historic districts and manufactured homes. Cities and counties are authorized to establish historic districts and landmarks.¹⁶ In order to protect the state’s historical heritage and to protect property values, exterior changes to designated properties require a certificate of appropriateness. The certificate, issued by the local preservation board, confirms that the change is congruent with the special character of the historic district or landmark, based on established guidelines and procedures.

Statutory authority for regulating manufactured homes provides that local governments may not completely prohibit manufactured homes, but “may adopt and enforce appearance and dimensional criteria for manufactured homes . . . designed to protect property values, to preserve the character and integrity of the community or individual neighborhoods within the community, and to promote the health, safety and welfare of area residents.”¹⁷

House Bill 150

House Bill 150, Zoning/Design & Aesthetic Controls,¹⁸ would prohibit local governments from regulating certain defined building design elements for single family residences, duplexes, townhomes, and accessory structures. The bill language limits the authority for appearance standards available through zoning ordinances, subdivision ordinances, and other ordinances recommended by a community appearance commission.

“Building design elements” are defined to be “exterior building color; type or style of exterior cladding material; style or materials of roof structures or porches; exterior nonstructural architectural ornamentation; location or architectural styling of windows and doors, including garage doors; the number and types of rooms; and the interior layout of rooms.” The phrase “building design elements” does not include: “(i) the height, bulk, orientation, or location of a structure on a zoning lot; (ii) the use of buffering or screening to minimize visual impacts, to mitigate the impacts of light and noise, or to protect the privacy of neighbors; or (iii) regulations adopted pursuant to this Article governing the

¹⁵ G.S. § 160A-452. (“To formulate and recommend to the appropriate municipal planning or governing board the adoption or amendment of ordinances (including the zoning ordinance, subdivision regulations, and other local ordinances regulating the use of property) that will, in the opinion of the commission, serve to enhance the appearance of the municipality and its surrounding areas.”)

¹⁶ G.S. § 160A-400.1 et seq.

¹⁷ G.S. § 160A-383.1; § 153A-341.1.

¹⁸ NC General Assembly, Session 2013, House Bill 150, v.4, Senate Commerce Committee Substitute, adopted April 23, 2013 (available at <http://www.ncleg.net/gascripts/BillLookup/BillLookup.pl?BillID=H150&Session=2013>).

permitted uses of land or structures subject to the North Carolina Residential Code for One- and Two-Family Dwellings.”

The limitation applies “to any structures subject to regulation under the North Carolina Residential Code for One- and Two-Family Dwellings.” As defined in the NC Residential Code, House Bill 150 would apply to detached single-family dwellings, detached duplexes, townhomes, and accessory buildings and structures with any dimension greater than 12 feet. Certain live/work units also may qualify under the Residential Code.¹⁹

Regulation of building design elements is permissible if the property owner voluntarily consents as part of the process of zoning amendment or development approval. Exceptions are provided so that building design elements may be regulated for historic districts and landmarks, standards directly and substantially related to applicable building codes, manufactured homes, and as required for participation in the National Flood Insurance Program. Also, the bill does not affect private covenants or other contracts concerning building design elements.

A definitional issue is worth noting. The phrase “building design elements” is defined to include “the number and types of rooms.” Separate from design issues, this raises a question of basic zoning administration. Jurisdictions typically define dwelling units—and thus, residential densities—based on rooms. Commonly a dwelling unit is defined as an independent arrangement of rooms to include space for sleeping, cooking, and a bathroom. The definitions of single-family residential, duplex, and multi-family development depend on the number and types of rooms. House Bill 150 appears to prohibit such a definition of dwelling units.

With the restriction on regulating the number and types of rooms, it is unclear whether a local government could prevent a property owner from constructing an accessory dwelling unit in a garage or basement or attic. Similarly, it is unclear if communities could prevent over-crowded single-family residences that are commonly issues for coastal communities, mountain resort towns, and neighborhoods around colleges and universities. The Bill allows for rules adopted to regulate the use of land, but it is unclear, practically, how a local government would prevent additional density in single family neighborhoods.

Conclusion

Appearance standards can address various development aspects through different design aspects. State and federal courts have recognized regulation of aesthetics as permissible under the general police powers. And, the General Statutes grant various powers for appearance standards. House Bill 150 would limit the authority for local governments to enforce appearance standards for several types of residential uses.

¹⁹ 2012 NC Residential Code for One- and Two-family Dwellings, §R101.2 & R202.